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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

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12)
13) UNITED STATES OF AMERICA,)
14) Plaintiff,)

15) v.)

16) FE S. GARRETT)
17) Defendant.)
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Criminal Case No. 08CR0918-L

GOVERNMENT'S NOTICE OF INTENT TO
INTRODUCE SUMMARIES OF
VOLUMINOUS EVIDENCE PURSUANT TO
FEDERAL RULE OF EVIDENCE 1006

23 Plaintiff, United States of America, by and through its counsel Karen P. Hewitt, United
24 States Attorney, and Christopher S. Strauss, Special Assistant United States Attorney, hereby
25 submits its Notice of Intent to Introduce Summaries of Voluminous Evidence Pursuant to Federal
26 Rule of Evidence 1006.
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28 MEMORANDUM OF LAW

The Government intends to offer summaries of voluminous evidence during the presentation
of its case-in-chief at trial. These summaries are admissible under Fed. R. Evid. 1006:

The contents of voluminous writings, recordings, or photographs
which cannot conveniently be examined in court may be presented
in the form of a chart, summary, or calculation. The originals, or
duplicates, shall be made available for examination or copying, or
both, by other parties at reasonable time and place. The court

1 may order that they be produced in court.

2 The proponent of a summary under Rule 1006 must establish the admissibility of the
3 underlying documents as a condition precedent to introduction of the summary. United States v.
4 Johnson, 594 F.2d 1253, 1257 (9th Cir. 1979). The proponent must also establish that the
5 underlying documents were made available to the opposing party for inspection. Paddack v. Dave
6 Christensen, Inc., 745 F.2d 1254, 1259 (9th Cir. 1984). Summaries must fairly represent the
7 underlying documents, and their admission into evidence is left to the trial court's discretion. David
8 & Cox v. Summa Corp., 751 F.2d 1507, 1516 (9th Cir. 1985). Although the underlying documents
9 must be admissible, the underlying documents need not be admitted into evidence. See United
10 States v. Wood, 943 F.2d 1048, 1053 (9th Cir. 1991) (holding that summaries are evidence when
11 admitted in lieu of underlying documents); United States v. Myers, 847 F.2d 1408, 1412 (9th Cir.
12 1988) (quoting Johnson, 594 F.2d at 1257 n.6).

13 The Ninth Circuit has repeatedly approved of the use of Rule 1006 summaries, particularly
14 where, as here, the summaries will aid the jury in organizing the information contained in a large
15 number of documents into understandable form. See, e.g., Goldberg v. United States, 789 F.2d
16 1341, 1343 (9th Cir. 1986) (testimony concerning summaries of voluminous tax records permitted);
17 United States v. Shirley, 884 F.2d 1130, 1133 (9th Cir. 1989) (summary charts of telephone calls
18 permitted to help jury organize and evaluate evidence); Keith v. Volpe, 858 F.2d 467, 479-80 (9th
19 Cir. 1988) (summaries necessary to clearly present relevant facts in government agency files); see
20 also United States v. Hazelwood, 40 Fed. Appx. 347, 350 (9th Cir. 2002) (unpublished).

21 Rule 1006 does not require that it be literally impossible for the jury to examine the
22 underlying records before a summary may be admitted. See Shirley, 884 F.2d at 1133; United States
23 v. Stephens, 779 F.2d 232, 238-39 (5th Cir. 1985); United States v. Scales, 594 F.2d 558, 562 (6th
24 Cir. 1979). Further, the fact that the some of the underlying documents may be admitted into
25 evidence does not mean that they can be "conveniently examined in court." See Stephens, 779 F.2d
26 at 239.

1 Rule 1006 summaries are evidence in their own right rather than just demonstrative
2 testimonial aids that summarize documents and testimony already admitted into evidence. Wood,
3 943 F.2d at 1043; United States v. Smyth, 556 F.2d 1179, 1184 (5th Cir. 1977).

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5 SUMMARIES IN THE INSTANT CASE

6 In this case, the Government intends to offer into evidence summaries of the deposits,
7 withdrawals, and transfers into and out of twelve bank accounts used by the defendant from 2001
8 through 2006. A list of the bank accounts that will be summarized is attached as Exhibit A. The
9 bank account records are voluminous, consisting of in excess of 3,800 pages of statements, deposit
10 slips, and checks. Therefore, all of the bank records cannot be conveniently examined by the fact-
11 finder in court. The underlying bank account records are admissible as business records pursuant to
12 Fed. R. Evid. 803(6). See Hazelwood, 40 Fed. Appx. at 350 (noting that bank records are admissible
13 pursuant to Rule 803(6) and are a "routine starting point" for a fraud investigation). The underlying
14 bank records were provided in electronic form to the defendant in discovery on April 23, 2008.

15 The Government intends to introduce the summaries of the bank account records in lieu of
16 introducing the underlying bank records. Accordingly, the summaries of the bank account records
17 will themselves be the Government's trial evidence. See Wood, 943 F.2d at 1043. Draft versions of
18 the summaries, in the form of spreadsheets, will be provided to the defense well in advance of trial
19 and the final versions of the summaries will be provided shortly before the testimony of the
20 Government's summary expert witness.

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CONCLUSION

The Government's proposed summaries of voluminous evidence are based upon admissible evidence of which the defendant has been given notice and which has been provided to the defense. Copies of final versions of the summaries will be provided to the defendant as soon as they are completed. The Government intends to offer these summaries at trial and move for their admission into evidence during its case-in-chief, pursuant to Federal Rule of Evidence 1006.

DATED: July 31, 2008

/s/ Christopher S. Strauss
Christopher S. Strauss
Special Assistant United States Attorney
Attorney for Plaintiff
United States of America
Email: Christopher.S.Strauss@usdoj.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Case No. 08CR0918-L
Plaintiff,)
v.)
FE S. GARRETT,)
Defendant.)

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, Christopher S. Strauss, am a citizen of the United States and am at least eighteen years of age.
My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action.

I have caused service of GOVERNMENT'S NOTICE OF INTENT TO INTRODUCE
SUMMARIES OF VOLUMINOUS EVIDENCE PURSUANT TO FEDERAL RULE OF EVIDENCE
1006 on defendant FE S. GARRETT, pro se, by sending a copy of the motion via Federal Express on
July 31, 2008 to defendant at the following address:

The Geo Group
Reg. # 0799-0298
Western Region Detention Facility
220 West C Street
San Diego, CA 92101

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2 I have caused service of GOVERNMENT'S NOTICE OF INTENT TO INTRODUCE
3 SUMMARIES OF VOLUMINOUS EVIDENCE PURSUANT TO FEDERAL RULE OF EVIDENCE
4 1006 on defendant's standby counsel by electronically filing the foregoing with the Clerk of the District
5 Court using its ECF System, which electronically notifies them:
6

7 Erica Kristine Zunkel
8 Federal Defenders of San Diego
9 225 Broadway, Suite 900
10 San Diego, CA 92101

Erica_zunkel@fd.org

11 I declare under penalty of perjury that the foregoing is true and correct.

12 Executed on July 31, 2008.

13 /s/ Christopher S. Strauss
14 CHRISTOPHER S. STRAUSS
15 Special Assistant United States Attorney
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